

Internal Revenue Service  
**memorandum**

CC:TL-N-6407-86

Brl:JCAlbro

date: JUL 9 1986

to: District Counsel, Jacksonville CC:JAX  
Attn: William R. McCants

from: Director, Tax Litigation Division CC:TL

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subject: [REDACTED]

This is in response to your request dated May 28, 1986 for technical advice regarding Rev. Proc. 84-74, § 4.01(3)(c), 1984-2 C.B. 736, 740. Rev. Proc. 84-74 contains procedures under section 1.446-1(e) of the regulations for requesting the Commissioner's consent to change a method of accounting for federal income tax purposes.

ISSUE

Does District Counsel have the authority to issue to the taxpayer a letter indicating no objection to the taxpayer's request for a change in method of accounting where the proposed change would not affect docketed cases but is inconsistent with current Service position? RIRA No. 0446.04-03.

CONCLUSION

When a taxpayer has a case pending in court with respect to an income tax issue, the requirement that the taxpayer obtain an agreement from District Counsel that there is no objection to the taxpayer's request for a change in method of accounting is not intended to provide a substantive hurdle to the taxpayer's ability to file an application for change in method of accounting, absent a direct nexus to issues in litigation.

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Therefore, if there is no direct relationship between the requested change in the proposed application and the issues in litigation, District Counsel should provide a letter indicating no objection to the taxpayer's proposed request for a change of accounting method. Absent such an agreement letter from District Counsel, the taxpayer could not submit an application. Substantive review of the Application for Change in Methods of Accounting, Form 3115, is the responsibility of the Corporation Tax Division, and such applications will, of course, be reviewed in accordance with current Service position.

#### DISCUSSION

Rev. Proc. 84-74, 1984-2 C.B. 736 sets out procedures for taxpayers to request the Commissioner's consent to a change in a method of accounting for federal income tax purposes. If at the time of filing Form 3115, Application for Change in Method of Accounting, the taxpayer's return is before any federal court with respect to an income tax issue, the taxpayer must obtain an agreement from counsel for the Government that there is no objection to the taxpayer requesting a change in method of accounting. Rev. Proc. 84-74, § 4.01(3)(c).

Your office has two docketed Tax Court cases involving [REDACTED] for taxable years [REDACTED] through [REDACTED]. The only issue in the docketed years not conceded by petitioner involves the issue of whether customer deposits constitute taxable income to petitioner during the years at issue. The Commissioner's position on the taxability of customer deposits was upheld in City Gas Company of Florida v. Commissioner, 74 T.C. 386 (1980), rev'd, 689 F.2d 943 (11th Cir. 1983), on remand, T.C.M. 1984-44. The [REDACTED] customer deposit issue was settled earlier this year and is awaiting Joint Committee approval.

Pursuant to Rev. Proc. 84-74, on [REDACTED], [REDACTED] requested a letter from District Counsel indicating no objection to taxpayer's proposed request for a change in method of accounting. [REDACTED]'s proposed request involves their unbilled year-end revenue in which they wish to change from the cycle meter reading method to accrual of unbilled revenue in order to enable them to defer accrual of unbilled revenue until the succeeding calendar year in line with the Tax Court's decision in Orange and Rockland Utilities, Inc. v. Commissioner, 86 T.C. 199 (1986). Taxpayer's proposed change in accounting method for unbilled revenue is inconsistent with Service

position on this issue. See Announcement 86-65, I.R.B. 1986-19, April 29, 1986 and Rev. Rul. 72-114, 1972-1 C.B. 124. Your memo of May 28, 1986 indicates that the proposed change in accounting method should not in any way affect the docketed Tax Court cases.

The Corporation Tax Division is responsible for reviewing and approving or denying applications for changes in accounting methods. The Corporation Tax Division also wrote Rev. Proc. 84-74. According to James Webb, Chief, Section 1, Corporation Tax Branch, Corporation Tax Division, the required letter from District Counsel was intended to prevent applications which would have a substantive and direct affect on issues in litigation. The procedure is not intended to enable District Counsel to prevent a taxpayer from filing an application by withholding agreement to the application where a nexus to issues in litigation is not present. Substantive approval of all requests for accounting method changes rests solely with the Corporation Tax Division. Accordingly, absent a direct relationship between the requested change in accounting method in the proposed application, Form 3115, and issues in litigation, District Counsel should provide the letter required by Rev. Proc. 84-74, § 4.01(3)(c). Such a letter neither requires nor implies Counsel's substantive approval of taxpayer's application. The procedural requirement of the letter was designed to prevent a taxpayer from obtaining permission for an accounting change which would have a substantive affect on issues already in litigation and perhaps give taxpayer a desired result other than through completion of the litigation already in progress.

#### RECOMMENDATION

It is our opinion that District Counsel should provide the requested letter to taxpayer pursuant to Rev. Proc. 84-74, § 4.01(3)(c). It would be appropriate to include in the letter your opinion that the application is in direct conflict with Service position.

If you have any questions concerning this matter, please contact Joyce C. Albro at 566-3521.

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By:

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